In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 943

CLIFTON WRIGHT and JESSIE PARAMORE, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners were convicted by a jury in the United States District Court for the Southern District of New York of substantive narcotics offenses on separate dates in October and November 1968, in violation of 21 U.S.C. 173 and 174. Wright was sentenced to concurrent terms of nine years on each count; Paramore received concurrent terms of five years on each count. The court of appeals affirmed from the bench without opinion (Pet. 7).

A conversation between Wright and government informant Bedford shortly before the first sale was monitored by means of an electronic transmitter concealed on the person of the informant with the latter's consent. Paramore was not a party to this conversation. The agents who had overheard the conversation and the informant all testified as to its contents at trial.

This overheard conversation was peripheral to and preceded the actual sale in October and was unrelated to the November sale.[1] Cf. *Chapman* v. *California*, 386 U.S. 18; *Benton* v. *Maryland*, 395 U.S. 784, 791. Moreover, unlike *United States* v. *White*, No. 13, this Term, the informant testified as to its contents at trial.

It is therefore respectfully submitted that the petition for a writ of certiorari be denied.[2]

ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1970.

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[1] Its text is set forth in the government's brief in the court of appeals, which we are filing herewith, at p. 5, n. **.

[2] Even if the Court is of the view that the petition should be deferred until after *White* is decided, we point out that petitioner Paramore could gain nothing from a holding in *White* contrary to the government's position in that case, since he was not a party to the overheard conversation. *Alderman* v. *United States*, 394 U.S. 165.

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